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USTR Says Retaliation against U.S. Safeguard Measure Would be Unprecedented

WASHINGTON - The Office of the United States Trade Representative said today that any immediate unilateral retaliation against the United States for its recent temporary safeguard action on steel would be unprecedented in the history of World Trade Organization (WTO) dispute settlement procedures, and would strike at the heart of the multilateral trading system.

Both Japan and the European Union have threatened immediate retaliation against the United States for imposing temporary tariffs on imported steel under safeguard provisions of the WTO without waiting for a WTO ruling by an independent, neutral panel.

A review of 32 WTO safeguard cases over eight years shows only one example of a country unilaterally retaliating against a safeguard measure that a WTO member imposed prior to a WTO ruling. That retaliation, by Poland against Slovakia's safeguard on imported sugar, prompted such widespread criticism among WTO members that Poland quickly withdrew its retaliation.

Moreover, in none of these 32 cases did the country taking the safeguard action notify the WTO of any rebalancing - a step that the EU and Japan insist is required.

Two of the cases dealt with the question of whether there was an absolute increase in imports - an issue the EU has raised with the United States in the steel case. "Absolute" refers to the volume of goods imported, rather than the amount imported relative to domestic production.

In a 1998 case involving imported footwear from Argentina, the EU contested Argentina's claim that there was an absolute increase in imports, but recognized that the dispute settlement process was the appropriate venue for resolving the case. The question of whether there was an absolute increase in imports rose again last year when Korea was challenging the U.S. safeguard measure on line pipe. Korea did not seek unilateral retaliation, and the dispute panel eventually decided that the United States was correct.

"As the EU itself has said, no nation should take justice in its own hands without a prior review by an

independent and neutral panel,” said Josette Shiner, Associate U.S. Trade Representative for Policy and Communications. “To ignore this long string of precedent would undermine the integrity of the WTO rules and processes.”

The EU made its statement in a 1999 case, *United States - Import Measures on Certain Products from the European Communities*, in which it criticized the United States for an effort “to be judge and jury . . . and take justice in its own hands without a prior review by an independent and neutral panel.”

Taking unilateral action will encourage other WTO members to ignore the dispute settlement process, which both Europe and Japan have vigorously defended in dispute settlement cases before the WTO. The WTO’s Dispute Settlement Understanding (DSU) does not contain any exceptions that would allow a member to deviate from normal dispute settlement procedures when resolving issues under Article 8.3 of the Safeguards Agreement.

Europe and Japan have gone on the record denouncing the use of unilateral trade action in dispute settlement procedures. Japan took the following position in a recent dispute settlement case before the WTO: “The renunciation of unilateral trade measures in the WTO Dispute Settlement is one of the most important rules of the WTO. WTO Members are prohibited from unilaterally suspending concessions or other obligations under the WTO Agreement.”

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Fact sheet on WTO safeguard actions:

Safeguard measures notified to the WTO between 1995 and 2001:

32 definitive measures imposed

6 provisional measures imposed with no definitive measure imposed (includes one measure imposed by Japan, which included 3 different products)

5 recently notified provisional measures

Rebalancing/Retaliation:

Under Article 12.5 of the Safeguards Agreement, all rebalancing/retaliation actions are supposed to be notified to the WTO. Only two such actions have been notified since the WTO entered into force. One of them took effect only after the end of the WTO dispute settlement process.

The other retaliation was notified last year, when Poland tried to retaliate immediately in a case involving a safeguard imposed by Slovakia. However, Poland was roundly criticized for doing so and quickly terminated the retaliation.

Definitive Safeguard Measures

Argentina - Footwear, peaches, motorcycles

Brazil - Toys

Chile - Wheat, powdered milk

Czech Republic - Cane, beet sugar, isoglucose

Egypt - Safety Matches, powdered milk, fluorescent Lamps

India - Acetylene, Carbon Black, Slabstock Polyol, Propylene Glycol, Phenol, Acetone, Gamma Ferric Oxide

Jordan - Biscuits

Korea - Garlic, dairy products

Latvia - Swine meat

Lithuania - Pastry yeast

Morocco - Bananas

Philippines - Ceramic tiles (April 2002)

Slovakia - Sugar

USA - Line pipe, wire rod, steel, wheat gluten, lamb meat, broom corn brooms

Provisional Measures Imposed; No Definitive Measure

Bulgaria - Ammonium Nitrate

Chile - Synthetic Socks, mixed oils

Japan - Tatami-omote; welsh onions; shiitake mushrooms

Slovakia - Swine meat

Slovenia - Swine meat

Provisional Measures Imposed Recently

Costa Rica - Rice

Czech Republic - Cocoa Powder

EC - Steel

Jordan - Magnetic tapes

Philippines - Grey Portland cement

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